



Senate

General Assembly

File No. 581

February Session, 2016

Substitute Senate Bill No. 439

Senate, April 11, 2016

The Committee on Government Administration and Elections reported through SEN. CASSANO, S. of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE STATE CONTRACTING STANDARDS
BOARD AND REQUIREMENTS FOR PRIVATIZATION CONTRACTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (21) of section 4e-1 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (21) "Privatization contract" means an agreement or series of
5 agreements between a state contracting agency and a person or entity
6 in which such person or entity agrees to provide services that are
7 substantially similar to and in lieu of services provided, in whole or in
8 part, by state employees, other than contracts with a nonprofit agency,
9 which are in effect as of January 1, 2009, and which through a renewal,
10 modification, extension or rebidding of contracts continue to be
11 provided by a nonprofit agency. "Privatization contract" includes any
12 procurement contract entered into on or after July 1, 2016, for which
13 subsequent related services, the total cost of which exceeds fifty

14 thousand dollars per year, will be required;

15 Sec. 2. Subdivision (28) of section 4e-1 of the general statutes is
16 repealed and the following is substituted in lieu thereof (*Effective from*
17 *passage*):

18 (28) "State contracting agency" means any executive branch agency,
19 board, commission, department, office, institution or council. "State
20 contracting agency" does not include the judicial branch, the legislative
21 branch, the offices of the Secretary of the State, the State Comptroller,
22 the Attorney General, the State Treasurer, with respect to their
23 constitutional functions, any state agency with respect to contracts
24 specific to the constitutional and statutory functions of the office of the
25 State Treasurer. For the purposes of section 4e-16, as amended by this
26 act, "state contracting agency" includes any constituent unit of the state
27 system of higher education and, [for] notwithstanding any provision of
28 the general statutes, any quasi-public agency created to provide
29 financing for any such constituent unit, and any quasi-public agency
30 not specifically excluded under this chapter. For the purposes of
31 section 4e-19, "state contracting agency" includes the State Education
32 Resource Center, established under section 10-4q;

33 Sec. 3. Subsection (m) of section 4e-2 of the general statutes is
34 repealed and the following is substituted in lieu thereof (*Effective from*
35 *passage*):

36 (m) [Eight] The lesser of eight members of the board, or a majority
37 of the appointed members of the board, including, [not less than] in
38 either case, at least one member appointed by a legislative leader, shall
39 constitute a quorum which shall be required for the transaction of
40 business by the board.

41 Sec. 4. Subsection (c) of section 4e-13 of the general statutes is
42 repealed and the following is substituted in lieu thereof (*Effective from*
43 *passage*):

44 (c) All state agencies in the executive branch, the constituent units of

45 the state system of higher education and quasi-public agencies shall
46 post all bids, requests for proposals and all resulting contracts and
47 agreements on the State Contracting Portal and shall, with the
48 assistance of the Department of Administrative Services as needed,
49 develop the infrastructure and capability to electronically
50 communicate with the State Contracting Portal. No privatization
51 contract shall be valid unless, at least thirty days prior to execution of
52 such contract, all certifications required by section 4e-16, as amended
53 by this act, have been posted on the State Contracting Portal.

54 Sec. 5. Subsection (p) of section 4e-16 of the general statutes is
55 repealed and the following is substituted in lieu thereof (*Effective from*
56 *passage*):

57 (p) Prior to entering into or renewing any privatization contract that
58 is not subject to the provisions of subsection (a) of this section, the state
59 contracting agency shall evaluate such contract to determine if
60 entering into or renewing such contract is the most cost-effective
61 method of delivering the service, by determining the costs, as defined
62 in subsection (b) of this section, of such service. If the contract is for a
63 total amount of more than one million dollars, the agency shall also
64 provide a business case for such privatization in accordance with the
65 provisions of subsection (d) of this section. The state contracting
66 agency shall perform such evaluation of cost-effectiveness in
67 accordance with a template prescribed by the Secretary of the Office of
68 Policy and Management and such evaluation shall be subject to
69 verification by the secretary. Such template shall require a certification
70 by the state contracting agency that it has complied with all
71 requirements of this subsection and an explanation for the basis of
72 such agency's determination that the provisions of subsection (a) of
73 this section do not apply. If such evaluation of cost-effectiveness
74 includes a determination that there are no savings to the state if the
75 contract is performed by the contractor, the state contracting agency
76 shall not enter into such contract without (1) providing a written
77 report to the secretary concerning the reason such agency seeks to
78 enter into such contract despite a lack of savings, and (2) receiving

79 written authorization from the secretary to enter into such contract. If
80 such contract is not a renewal, the state contracting agency shall also
81 consider and report, in writing, to the secretary whether the quality of
82 services could be diminished by the privatization and any risks
83 associated with the termination or rescission of such contract. The
84 secretary may waive the requirement for an evaluation of cost-
85 effectiveness under this subsection upon a written finding by the
86 secretary that exigent or emergent circumstances necessitate such
87 waiver.

88 Sec. 6. Section 4e-16 of the general statutes is amended by adding
89 subsections (r) to (t), inclusive, as follows (*Effective from passage*):

90 (NEW) (r) A state contracting agency that seeks to enter into or
91 renew a privatization contract shall, not less than sixty days before
92 entering into such contract or renewal, provide written notice to any
93 collective bargaining agent that represents state employees performing
94 work of the type and nature required by the privatization contract.
95 Such notice shall include the information required under subsections
96 (a) to (d), inclusive, of this section, or subsection (p) of this section, as
97 applicable, and shall offer the collective bargaining agent the
98 opportunity to meet with the agency to discuss such information and
99 discuss whether the work could more appropriately be performed by
100 state employees, prior to the contract or renewal being entered into by
101 the agency.

102 (NEW) (s) Any state contracting agency that seeks approval of a
103 contract that could be done more inexpensively by state employees but
104 that determines there is an insufficient number of state employees
105 within such agency to perform the contract shall, not later than sixty
106 days after making such determination, submit a plan to the Secretary
107 of the Office of Policy and Management for preventing a recurrence of
108 such insufficiency by requesting the hiring of additional state
109 employees. The secretary shall, upon the submission of any proposed
110 budget or budget adjustment by the Governor, report to the joint
111 standing committees of the General Assembly having cognizance of

112 matters relating to appropriations and the budgets of state agencies
113 and government administration in accordance with the provisions of
114 section 11-4a, on whether and to what extent such agency plans are
115 included in such submission and the basis for determining whether
116 and to what extent to include such plans in the budget or budget
117 adjustment.

118 (NEW) (t) No state contracting agency may enter into a
119 privatization contract without obtaining the formal approval of the
120 contract from the Attorney General. Prior to entering into any such
121 contract, the agency shall submit to the Attorney General (1) a copy of
122 the proposed contract, (2) any certifications required by this section
123 attached to the contract, and (3) either a certification that the contract is
124 not subject to the provisions of subsection (a) of this section, a
125 certification that the contract was approved by the State Contracting
126 Standards Board or a copy of the written exemption from the
127 requirements of subsection (a) of this section signed by the Governor
128 pursuant to subsection (o) of this section. Any privatization contract
129 entered into on or after the effective date of this section shall not be
130 binding upon the state unless such privatization contract conforms
131 with the requirements of this subsection.

132 Sec. 7. Section 4e-47 of the general statutes is repealed and the
133 following is substituted in lieu thereof (*Effective July 1, 2016*):

134 On or [after January 1, 2011,] before January 1, 2017, each
135 constituent unit of the state system of higher education shall propose
136 regulations to the State Contracting Standards Board to be adopted by
137 the board. The board shall adopt such regulations, in accordance with
138 the provisions of chapter 54, [to apply the contracting procedures, as
139 described in sections 4e-18 to 4e-45, inclusive, to each constituent unit
140 of the state system of higher education] with any modifications the
141 board deems appropriate. Such regulations shall take into
142 consideration circumstances and factors that are unique to such
143 constituent units. Until such regulations are adopted by the State
144 Contracting Standards Board, the provisions of sections 4e-18 to 4e-46,

145 inclusive, shall apply to every expenditure of public funds by any
 146 constituent unit of the state system of higher education, irrespective of
 147 such funds' source.

148 Sec. 8. (NEW) (*Effective July 1, 2016*) (a) Not later than ninety days
 149 after the adjournment sine die of each regular session of the General
 150 Assembly, the Auditors of Public Accounts shall recommend to the
 151 Secretary of the Office of Policy and Management the appropriate
 152 staffing levels at the State Contracting Standards Board that are
 153 sufficient for the board to carry out its statutory duties. In any year
 154 during which the board is staffed at substantially lower levels than
 155 recommended by the auditors, the auditors may issue the compliance
 156 report for each state contracting agency as required under section 4e-6
 157 of the general statutes. If such a compliance report has not been issued
 158 for an agency for three years or more as of December thirty-first of any
 159 calendar year, the auditors shall issue such report not later than April
 160 first of the following calendar year.

161 (b) To the extent the State Contracting Standards Board remains
 162 below the staffing level recommended by the auditors, each state
 163 contracting agency shall designate an employee to serve as a liaison
 164 with the State Contracting Standards Board. Such liaison shall notify
 165 the board of any privatization contract valued at over fifty thousand
 166 dollars and shall provide the board any evaluations or analysis of such
 167 contract not later than ten days after the agency completes such
 168 evaluation or analysis. Electronic communications to the board
 169 directing the staff of the board to postings on the State Contracting
 170 Portal shall constitute sufficient notice under this subsection. Each
 171 state contracting agency shall inform its liaison that any such reporting
 172 is an essential part of such employee's duties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4e-1(21)
Sec. 2	<i>from passage</i>	4e-1(28)
Sec. 3	<i>from passage</i>	4e-2(m)

Sec. 4	<i>from passage</i>	4e-13(c)
Sec. 5	<i>from passage</i>	4e-16(p)
Sec. 6	<i>from passage</i>	4e-16
Sec. 7	<i>July 1, 2016</i>	4e-47
Sec. 8	<i>July 1, 2016</i>	New section

Statement of Legislative Commissioners:

In Section 1, "in effect as of" was changed to "entered into on or after" for accuracy and to clarify that the new provisions do not apply to existing contracts, and the provisions were reorganized for accuracy and clarity; in Section 5(p), "If such evaluation of cost-effectiveness includes a determination" was substituted for "If the evaluation determines" for accuracy and clarity, and the brackets around "of cost-effectiveness" were deleted for accuracy and consistency; in Section 6(r) "provided" was changed to "performed", in Section 6(s) "determination" was changed to "insufficiency" and in Section 6(t), "on or after the effective date of this section" was substituted for "after the effective date of this section" for accuracy; in Section 8, "statutory mission" was changed to "statutory duties" for consistency, and in Sections 1, 3, 6 and 7, provisions were reorganized for clarity.

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Dept. of Administrative Services	GF - Cost	575,000	575,000
Constituent Units of Higher Education	GF - Cost	750,000	750,000
State Comptroller - Fringe Benefits ¹	GF - Cost	529,205	529,205
Various State Agencies	GF - Potential Cost	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill expands the requirements for privatizing state services for contracting agencies, including the Department of Administrative Services (DAS), and expands the requirement to conduct a detailed cost-benefit analysis to include any privatizing procurement contract proposal over \$50,000 annually.

The bill results in a cost to DAS of \$575,000 in FY 17 and FY 18 for eight positions plus associated fringe benefits of \$229,655 in each year. The bill will create a significant workload increase for DAS; it is estimated that DAS will have to perform a cost benefit analysis on over 150 contracts per year.

The bill also results in a cost to the constituent units of higher education of \$750,000 in FY 17 and FY 18 for ten positions plus

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 39.94% of payroll in FY 17 and FY 18.

associated fringe benefits of \$299,550 in each year. These positions would be responsible for the research, analysis and documentation required for cost effectiveness evaluations and cost benefit analyses through marketplace, service industry segment benchmarks and Requests for Information prior to the constituent unit's issuance of any bid solicitations. Additionally, these positions would review and analyze bid responses to perform the cost effectiveness evaluations and cost benefit analyses using the prescribed templates; develop detailed business cases to support the constituent unit's decision to contract with an outside vendor rather than hiring additional employees to perform the services; and present all of the required information and documentation to the State Contracting Standards Board or other appropriate agency for approval.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 439*****AN ACT CONCERNING THE STATE CONTRACTING STANDARDS BOARD AND REQUIREMENTS FOR PRIVATIZATION CONTRACTS.*****SUMMARY:**

This bill expands the requirements for privatizing state services, including the (1) contracts and agencies subject to the state's privatization law and (2) steps agencies must take to comply with the law. It does the following, among other things:

1. expands the definition of "privatization contract" to include procurement contracts for which subsequent related services of at least \$50,000 per year will be required;
2. subjects quasi-public agencies to the state's privatization law;
3. requires that, for privatization contracts for services that are currently privatized, the state or quasi-public agency provide a business case for the privatization if the contract is for more than \$1 million, in addition to the cost-effectiveness evaluation required by existing law;
4. requires state and quasi-public agencies that enter into privatization contracts due to insufficient staffing levels to submit plans for hiring more state employees;
5. prohibits (a) state and quasi-public agencies from entering into a privatization contract without the attorney general's formal approval and (b) privatization contracts from being valid unless certain certifications are posted on the State Contracting Portal at least 30 days before the contract's execution;

6. expands the State Contracting Standards Board's (SCSB's) authority over the constituent units of higher education; and
7. requires the auditors of public accounts and state contracting agencies to assume certain duties if SCSB is determined to be understaffed.

The bill also changes SCSB's quorum requirements from eight members to a majority of the members actually appointed. The board's full membership is 14 members (§ 3).

EFFECTIVE DATE: Upon passage, except that the higher education and SCSB staffing provisions are effective July 1, 2016.

§§ 1 & 2 — APPLICABILITY OF PRIVATIZATION LAW

Definition of Privatization Contract (§ 1)

By law, a privatization contract is an agreement or series of agreements between a state contracting agency and a person or entity that agrees to provide services that are substantially similar to and in lieu of services provided, in whole or in part, by state employees. It does not include contracts with a nonprofit agency that were in effect as of January 1, 2009 and, through a renewal, modification, extension, or rebidding of contracts, continue to be provided by a nonprofit agency.

The bill expands the definition of privatization contract to include procurement contracts entered into on and after July 1, 2016 that will require subsequent related services of at least \$50,000 per year.

State Contracting Agency (§ 2)

The bill subjects quasi-public agencies, including quasi-public agencies that provide financing to a constituent unit of higher education, to the state's privatization law by defining them as "state contracting agencies" for the purposes of that law. Under existing law, state contracting agencies are executive branch agencies, boards, commissions, departments, offices, institutions, and councils, except for the offices of the state treasurer, comptroller, attorney general, and

secretary of the state with respect to their constitutional functions. The definition includes the constituent units of higher education for purposes of the privatization law.

§ 5 — CONTRACTS FOR SERVICES THAT ARE CURRENTLY PRIVATIZED

Business Case

By law, if a state contracting agency seeks to enter into a contract that privatizes services performed by state employees, it generally must conduct a cost-benefit analysis and submit to the SCSB a business case for the contract. The business case must include, among other things, the cost-benefit analysis and 11 other analyses relating to the privatized service (CGS § 4e-16(d)).

For privatization contracts not subject to this requirement (i.e., contracts for services that are currently privatized), state contracting agencies must instead evaluate the contract, using a template prescribed by the Office of Policy and Management (OPM) secretary, to determine if entering into or renewing it is the most cost-effective way of delivering the service. The bill requires agencies to additionally provide a business case for the privatization if the contract is for more than \$1 million. However, it does not subject these business cases to SCSB approval or specify to whom they must be provided.

Cost-Effectiveness Evaluation

Under the bill, the OPM-prescribed template for the cost-effectiveness analysis must require the state contracting agency to (1) certify that it has complied with the requirements for the cost-effective analysis and (2) explain why it is not subject to the process for privatizing services performed by state employees.

The bill prohibits agencies, whenever the cost-effectiveness evaluation does not demonstrate savings from privatization, from entering into the contract unless they (1) provide the OPM secretary with a written report explaining why they want to enter into the contract despite the lack of savings and (2) receive the secretary's

written approval. Unless the contract is a renewal, the agency must also report to the secretary whether the quality of services could be diminished by privatization and any risks associated with terminating or rescinding the contract.

§§ 4 & 6 — PRIVATIZATION CONTRACTS GENERALLY

Notice to Collective Bargaining Agents (§ 6)

Under existing law, if a privatization contract for a service that is not currently privatized would result in the layoff, transfer, or reassignment of at least 100 state employees, the state contracting agency must, after conducting a cost-benefit analysis and consulting with potentially affected bargaining units, notify the state employees in these bargaining units. The agency must allow the employees an opportunity to reduce the cost of the service (CGS § 4e-16(c)(3)).

The bill additionally requires state contracting agencies, before entering into or renewing any privatization contract, to provide at least 60 days' written notice to any collective bargaining agent that represents state employees performing work of the type and nature required by the contract. The notice must (1) include all privatization analyses required by existing law and the bill (e.g., the cost-effectiveness analysis or business case) and (2) offer the bargaining agent a meeting with the agency to discuss the analyses and whether state employees could more appropriately perform the work.

Plan for Hiring Additional State Employees (§ 6)

Under existing law, if a business case for a privatization contract is based on evidence that a state contracting agency is not sufficiently staffed to provide a core governmental function, then the agency must include with the business case a plan to remediate the understaffing so that the agency may provide the services directly in the future (CGS § 4e-16(d)).

The bill additionally requires state contracting agencies that (1) seek to enter into any privatization contract that "could be done more inexpensively by state employees" (presumably as determined by the

cost-benefit or cost-effectiveness analysis) and (2) determine that there are not enough employees in the agency to perform the contract, to submit a plan to the OPM secretary to hire more state employees in order to prevent the recurrence of insufficient staffing levels. The agencies must do so within 60 days of making the determination. The OPM secretary, as part of any proposed budget or budget adjustment submitted by the governor, must report to the Appropriations and Government Administration and Elections committees on whether and to what extent the agency's plans are included in the proposal, and the basis for this action.

Attorney General Approval (§ 6)

The bill prohibits state and quasi-public agencies from entering into a privatization contract without the attorney general's formal approval. It requires agencies, as part of their submission to the attorney general, to include (1) a copy of the proposed contract; (2) any certifications required by the bill and the existing privatization law; and (3) (a) a certification that the contract was approved by SCSB, (b) a certification that it was not subject to the board's approval, or (c) a copy of an exemption granted by the governor for certain emergency procurements.

The bill makes a privatization contract not binding on the state if it is entered into on or after the bill's effective date without (1) the attorney general's approval or (2) compliance with the above submission requirements.

State Contracting Portal Postings (§ 4)

The bill prohibits privatization contracts from being valid unless all certifications required by the bill and existing law are posted (presumably by the state contracting agency) on the State Contracting Portal at least 30 days before the contract's execution. In addition to the certifications required by the bill, existing law requires agencies to certify, as part of a cost-benefit analysis, that all projected costs, savings, and benefits are valid and achievable (CGS § 4e-16(b)).

§ 7 — CONSTITUENT UNITS OF HIGHER EDUCATION

By law, the state's constituent units of higher education are generally not subject to SCSB's authority, except for the privatization law. Under current law, SCSB was required to adopt, by January 1, 2011, regulations to apply the requirements of numerous SCSB-related statutes to the constituent units. The bill instead requires (1) the constituent units, by January 1, 2017, to propose regulations to SCSB for adoption and (2) SCSB to adopt the regulations with any modifications it deems appropriate. It subjects all constituent unit expenditures to the requirements of the SCSB-related statutes until the board adopts the regulations. For example, it would allow SCSB to hear and decide contests by bidders and proposers of contract solicitations or awards by the constituent units (CGS §§ 4e-36 and 4e-40).

The bill does not specify what the regulations must address or establish a deadline by which SCSB must adopt them. Additionally, several of the statutes that would apply to the constituent units require SCSB to adopt implementing regulations before they become operative. To date, SCSB has not adopted any of these implementing regulations. It is thus unclear how the statutes would apply to the constituent units.

§ 8 — SCSB STAFFING

The bill requires the auditors of public accounts, within 90 days after the legislature adjourns a regular session sine die, to recommend SCSB's appropriate staffing level to the OPM secretary. If the board is staffed at "substantially lower levels" than recommended by the auditors, the auditors may issue a compliance report for each state contracting agency. (Existing law requires SCSB to (1) triennially audit contracting agencies' compliance with procurement statutes and regulations and (2) issue a compliance report within 30 days after completing the audit.) The bill does not specify what constitutes substantially lower staffing levels.

Under the bill, if a compliance report for an agency has not been

issued for three years or more as of December 31 in any year, the auditors must issue the report by the following April 1. Presumably, this means the auditors must also audit the contracting agency before issuing the report.

The bill also requires state contracting agencies, if SCSB remains below the auditors' recommended staffing level, to designate liaisons to SCSB. The liaison must notify the board of any privatization contract of \$50,000 or more and provide the board with any evaluations or analysis of the contract within 10 days of completing the evaluation or analysis. Agencies must notify the liaison that such reporting is an essential part of his or her duties.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 8 Nay 6 (03/21/2016)